



# Energy and Telecommunications Interim Committee

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## 58th Montana Legislature

### SENATE MEMBERS

ROYAL JOHNSON  
DON RYAN  
EMILY STONINGTON  
FRED THOMAS

### HOUSE MEMBERS

DANIEL FUCHS  
DAVE GALLIK  
GARY MATTHEWS  
ALAN OLSON

### COMMITTEE STAFF

MARY VANDENBOSCH, Research Analyst  
TODD EVERTS, Staff Attorney  
REBECCA SATTLER, Secretary

## MINUTES

Date: September 9, 2004

Room 102, State Capitol Building

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.**

### COMMITTEE MEMBERS PRESENT

SEN. ROYAL JOHNSON  
SEN. EMILY STONINGTON  
SEN. FRED THOMAS

REP. ALAN OLSON (Chairman)  
REP. GARY MATTHEWS  
REP. DAVE GALLIK

### COMMITTEE MEMBERS ABSENT

SEN. DON RYAN  
REP. DANIEL FUCHS

### STAFF PRESENT

TODD EVERTS, Staff Attorney  
CYNTHIA A. PETERSON, Secretary

### VISITORS

Agenda (ATTACHMENT 1).  
Visitors' list (ATTACHMENT 2).

Energy & Telecommunications Committee  
Meeting  
June 20 & 21, 2005 - Roundup, MT  
Exhibit #2

## **COMMITTEE ACTION**

- The ETIC approved the minutes of the June 9-10, 2004, Energy and Telecommunications Interim Committee.
- The ETIC adopted bill draft request LC0045 as amended.
- The ETIC adopted bill draft request LC0042 as amended.
- The ETIC adopted bill draft request LC0041.
- The ETIC approved the drafting of a conceptual bill regarding a property tax reduction for renewable resource generating facilities of one megawatt or greater. The ETIC subsequently moved to reconsider its action.
- The ETIC adopted bill draft request LC8686 as amended.

## **CALL TO ORDER, APPROVAL OF MINUTES**

Rep. Alan Olson, Chairman of the Energy and Telecommunications Interim Committee (ETIC) called the meeting to order at 8:35 a.m., in Room 102, State Capitol Building. The Secretary noted the roll (ATTACHMENT 3). Sen. Johnson carried the proxy for Sen. Ryan (ATTACHMENT 4) and Chairman Olson held the proxy for Rep. Fuchs (ATTACHMENT 5). Sen. Johnson moved the minutes of the June 9-10, 2004, ETIC be approved. The motion carried unanimously.

## **UPDATE ON NORTHWESTERN ENERGY'S BANKRUPTCY AND ANY INITIATIVES TO PURCHASE NORTHWESTERN ENERGY'S ASSETS**

### **• Gary Drook, Brian Bird, and Roger Schrum**

Mr. Gary Drook, President and CEO of NorthWestern Energy (NWE), provided the ETIC with an update on NWE's financial restructuring, as well as an update on the winter heating season (EXHIBIT 1). Mr. Drook emphasized to the ETIC that NWE is not selling the company and remains focused on continuing to strive for stability and growth.

Mr. Brian Bird, Chief Financial Officer for NorthWestern Energy, continued the presentation and reviewed NWE's financial restructuring contained in Exhibit 1. Mr. Bird commented NWE is now very focused on cash and working capital.

Mr. Roger Schrum, Vice President-Human Resources and Communications, NorthWestern Energy, continued the presentation and provided the ETIC with an update on the upcoming winter heating season contained in Exhibit 1.

Mr. Drook closed the presentation by stating he is excited about NWE's new leadership and the new strategy which focuses on the regulated utility business.

**(Tape 1; Side B)**

Mr. Drook suggested NWE would emerge from bankruptcy with the cleanest balance sheet in the industry. Mr. Drook emphasized that NWE has not raised rates in Montana because of the bankruptcy, and that NWE's shareholders, not the average ratepayers, were the ones who paid for the bankruptcy.

- **Questions from the ETIC**

Rep. Gallik asked if NWE was to invest into more transmission, if that cost would be put into the ratebase and would result in Montana ratepayers paying for the enhancement of transmission. Rep. Gallik was concerned that Montana would be subsidizing new transmission by way of monthly power bills to have the power get to the west coast. Mr. Drook had the same concern only in reverse and replied NWE might be asked to take its profits from transmission and subsidize Montana ratepayers. Mr. Drook suggested a solution would be to separate transmission from distribution and not allow the situation to occur either way.

Rep. Gallik expressed concern about the potentially 30 percent higher gas rates for the coming heating season and asked how much of the 30 percent is due to the fact that there is an ease of transmission of the gas, enabling the gas to be moved into the more lucrative markets. Mr. Schrum responded natural gas is a competitive energy product, so the various products must track together to a certain extent, and noted competing energy supplies are also experiencing price increases. Mr. Drook added the explosion of ethanol plants has also had an effect since the plants consume more gas than all residential and business customers combined. In addition, gas-fired generation plants have become popular because they are easier to get permitted, and those plants also use a substantial amount of gas. Mr. Drook suggested this has resulted in supply being unable to keep up with demand. Mr. Schrum added that NWE is procuring gas for its customers at the best available price, and NWE does not receive a profit when passing to cost on to ratepayers.

Rep. Gallik expressed concerns about budget billing and NWE's policy that says if a customer has been late on a payment, the customer does not qualify for budget billing. Rep. Gallik suggested those customers who are late are exactly the customers who could benefit the most from budget billing. Mr. Schrum replied NWE has credit policies, and Mr. Drook added they would review NWE's credit policy.

Commissioner Bob Rowe, Montana Public Service Commission (PSC), commented there is a perceived capital risk associated with anything other than a gas plant and stated there is value in highly dispatchable gas resources and explained he has concerns about balance. In addressing termination policies, Comm. Rowe explained the PSC has paid substantial attention to this issue. Comm. Rowe stated he would prefer to have the utility speaking with a customer in payment trouble much earlier in the heating season. In addition, Comm. Rowe noted the chart on p. 31, Exhibit 1, refers to nominal dollars not real dollars, and Comm. Rowe suggested if the chart did depict real dollars, the skewing at the end would be even greater. Comm. Rowe also thought if the chart started a few years earlier, the chart would show that the prices in the 1970s and early 1980s were also extraordinarily high. Comm. Rowe recalled suggesting many years ago that energy prices were in a trough and measures should be taken in advance of hitting the other side of the trough. Comm. Rowe suggested an opportunity was missed in the 1980s to prepare for the current energy spikes. Comm. Rowe closed by stating prices are remarkably higher and much more volatile now than they were in the 1980s, which will require

using tools now which may not have been as important in the 1980s.

Sen. Emily Stonington asked whether NWE's commitment to not expand beyond utility-type investments was a legal requirement of the agreement. Mr. Drook replied NWE has agreed to limit its investments in non-utility activities, but noted NWE could invest all it wanted in the utility business. Sen. Stonington commented many corporate boards are looking at restructuring and asked Mr. Drook to expand on the NWE's new board members. Mr. Drook provided background information on the new board members of NWE.

Sen. Royal Johnson asked about NWE's plans to sell Montana First Megawatts by 2003 and inquired when the auction would take place. Mr. Bird replied there are parties who are interested in bidding, but no date has been set. Mr. Bird commented NWE would like to see it accepted into the RFP with a contract.

Sen. Johnson directed the presenters to page 14 and noted the people who will own the company post-bankruptcy are not people who would generally invest as equity owners in a utility company. Sen. Johnson wondered if the new owners would want to put the company on the market and noted the "best interest of the company" would be what is in the best interest of the new owners. Mr. Drook explained the creditor's committee would vanish post-bankruptcy, but no one investor would be able to make a decision for NWE post-bankruptcy and only NWE's Board of Directors would be able to make decisions going forward. The Board of Directors can be replaced annually. Sen. Johnson expressed concern that the people who now own the company do not normally carry this type of investment. Mr. Drook responded the investors have other ways to liquidate their investment and could find another investor who would like to invest in an early-stage utility and believes there are better days ahead. Mr. Drook also suggested investors could make a secondary offering. Mr. Drook thought a sale of the company would not provide investors with the liquidity they are seeking soon enough, and investors would look for other ways to liquidate their holdings.

Sen. Johnson asked Mr. Drook if he thought paying a better than 25 percent dividend might attract other people. Mr. Bird replied to the question and stated NWE is attempting to target an approximate 67 percent payout ratio, and that typically utilities pay an even higher dividend rate. Mr. Bird stated NWE needs to attract equity and people who will invest in the company. Mr. Bird noted NWE needs to demonstrate to the rating agencies that they are serious about paying down the debt. Mr. Bird stated there needs to be a balance between attracting equity and getting to investment grade.

Chairman Olson addressed renegotiation of contracts and noted he did not see any information regarding QFs. Mr. Drook explained the four largest QFs have been renegotiated. Mr. Drook explained there was disagreement on whether NWE had the right to reject the QFs. Mr. Drook thought rejecting the QFs would prolong the bankruptcy and could result in large claims being filed against the bankruptcy estate. Mr. Drook stated canceling the QFs was simply not worth the fight.

Rep. Gallik expressed concern about having people whom they have not met controlling Montana's energy future. Mr. Drook addressed that concern by stating NWE's new board members have extensive experience in the energy field and will receive a comprehensive briefing on NWE. In addition, the new board members will attend a boot camp.

Mr. Drook clarified for Rep. Gallik that it is management's position to not sell the company, and that he could not speak for the new Board of Directors. Mr. Bird added the new Board of Directors will have a fiduciary duty to evaluate offers to purchase the company.

Sen. Fred Thomas asked what the top three creditors' percentile would be. Mr. Drook replied at one time, there were four owners who owned approximately 60 percent of the equity. One of those top three creditors has liquidated its holdings, and Mr. Drook did not have any information on who the purchaser was. Mr. Drook stated investors would make decisions based upon their own goals and objectives, and the Board of Directors will not have any loyalty to any one individual investor and its fiduciary responsibility will be to look out for all equity holders.

Sen. Thomas asked what activities NWE would be involved in post-bankruptcy that would not be regulated by the PSC. Mr. Drook directed Sen. Thomas to page 6 of Exhibit 1.

***(Tape 2; Side A)***

Sen. Thomas asked Mr. Drook if NWE was comfortable and committed to the default supply set up in Montana. Mr. Drook responded NWE is committed but less than comfortable. Mr. Drook explained it is a tremendous responsibility, and NWE will spend \$400 million buying energy for Montana, and that history dictates NWE may not recover the \$400 million.

Sen. Thomas asked to be reminded where the break even point between electricity and natural gas is for a resident to heat their home. Mr. Bird did not have the information, but stated he would get the information and report back.

Mr. Bird explained the \$100 million revolver is the only condition precedent from a refinancing standpoint that has to happen, but they believe it is in the best interest of the company to do all the proposed refinancing.

Sen. Thomas had questions regarding Montana First Megawatts, and asked, from a consumers' standpoint, if they are giving up something that consumers could ultimately use to gain. Mr. Drook explained that they have offered to absorb the sunk costs. Mr. Drook hoped that the PSC, in the end, will recognize the process was done fairly and openly. Sen. Thomas commented that it would be a great service to Montana if a private entity would pickup the Montana First Megawatts project.

Rep. Gallik commented on Mr. Drook's lack of enthusiasm in addressing the default supply and asked about the possibility of NWE passing on the role of default supplier. Mr. Drook responded NWE would be happy to turn over the role of default supplier, but that no qualified parties have stepped forward and offered to assume the role.

Sen. Johnson asked about the plant in Great Falls and if it was a "take or pay" arrangement. Mr. Schraum offered to obtain that information for Sen. Johnson.

**PUBLIC SERVICE COMMISSION PROPOSED LEGISLATION REVIEW AND UPDATE ON PSC ACTIVITIES**

- **NWE's Bankruptcy**

Commissioner Bob Rowe, Montana Public Service Commission, presented the ETIC with a PSC update (EXHIBIT 2). Comm. Rowe spoke about the inherent extreme differences between the utility bankruptcy in California and what was experienced by Montana. Comm. Rowe commented the PSC was pleased that NWE's new Board of Directors would be attending a boot camp. Comm. Rowe stated NWE's new Board members are high quality, and he has urged the new individual Board members to hold a Board meeting in Montana.

Comm. Rowe addressed the audit performed by Liberty Consulting, and commented his objective has been to put in place a regulatory environment that was rigorous, professional, constructive, and neutral. Comm. Rowe stated disallowances are not unique to Montana but are a national issue. Comm. Rowe thought NWE's bankruptcy, although it utilized many valuable resources, will produce a better company to serve Montana, and Comm. Rowe thanked the ETIC for its work.

- **Questions from the ETIC regarding NWE Bankruptcy**

Chairman Olson inquired how much money NWE has spent reimbursing the state for legal expenses. Comm. Rowe explained all expenses will be reimbursed, and none of the bankruptcy expenses will be recovered from ratepayers.

- **PSC's Legislative Agenda**

Comm. Rowe reviewed the PSC's comments and concerns with NWE's default supply plan. Comm. Rowe spoke about the Basin Creek contract and explained the plant would serve part of the peak and super-peak load. Comm. Rowe explained NWE's consultant will need to evaluate the portfolio and make decisions about what kinds of filings it will make with the PSC. Comm. Rowe identified unfinished issues in the default supply area as revisiting rate design for supply and looking at risk and incentive issues. Comm. Rowe thought it would be important to get a more complete portfolio before the PSC. Mr. Drook added NWE is looking at developing a portfolio-approach for natural gas similar to the current approach for electricity.

Sen. Thomas wondered about authorizing new generation. Comm. Rowe replied the PSC is concerned about long-term planning and thought it was critical to identify new or existing resources to deal with long-term concerns. Comm. Rowe added the Legislature has stated this is a responsibility of NWE, and NWE needs to plan accordingly.

Sen. Thomas was curious about the current RFPs, and Mr. Drook could not say what kind of proposals are coming in and stated they are being evaluated by an independent third party.

**(Tape 2; Side B)**

Sen. Johnson inquired whether the PSC would retain oversight over disconnects, and Comm. Rowe replied the PSC would retain its specific guidelines on customer termination. Comm. Rowe noted the various utilities have different practices regarding termination of utilities. Comm. Rowe strongly suggested it is critical that the customer be contacted at any sign of payment difficulty. Comm. Rowe explained the number of actual disconnects is relatively small compared to the number of disconnect notices issued.

Rep. Gallik inquired whether there were any legislative impediments if NWE were to hand off



the default supply and what the responsibility of the PSC would be. Comm. Rowe replied that it is the utility's responsibility, and legislative action would be necessary. Comm. Rowe stated the current system is finally kicking into gear and suggested focusing on that system rather than starting a new system. Comm. Rowe explained that a transfer of the default supply could occur through the current RFP if an all-requirements proposal were accepted by the parties and approved by the PSC. Mr. Todd Everts clarified the process would also require a statutory change.

In addressing Telecoms, Comm. Rowe explained there has been tremendous activity and directed the ETIC to the major telecom issues outlined in Exhibit 1.

### **PROPOSED LEGISLATION RELATED TO TELECOMMUNICATIONS**

- **Rick Hays, Qwest**

Mr. Rick Hays, President of Qwest in Montana, shared a couple of issues that he believed will warrant consideration during the 2005 Legislature. Mr. Hays presented written testimony to the ETIC (EXHIBIT 3).

### **REVIEW COMMITTEE BILLS**

- **Ring Fencing Draft Legislation**

Mr. Todd Everts, Staff Attorney, directed the ETIC to a one-page summary of written comments he received on the ETIC's proposed draft legislation (EXHIBIT 4). Mr. Everts reviewed LC0045. Mr. Everts explained that he translated the Governor's Energy Task Force's recommendations on ring-fencing into a bill draft. Mr. Everts directed the ETIC to the comment from the PSC contained on Exhibit 4. The PSC recommended a provision be included that would provide the PSC with rule-making authority to implement the provisions of the bill.

Sen. Emily Stonington moved the ETIC adopt bill draft request LC0045.

Rep. Gallik noticed that Section 2, subsection (3) gives wide discretion to the PSC and wondered whether the legislation was necessary since the PSC could do what it wanted on a case-by-case basis. Comm. Rowe responded that the safety-valve provision was necessary, useful, and provided comfort to the utilities.

Sen. Thomas asked for an explanation of lines 3-4, on page 2. Mr. Everts explained the language contained in that section was the "hammer." Mr. Everts explained a "material affiliate transaction" is defined as a transaction that is significant and excludes day-to-day affiliate transactions that do not have an impact on the financial viability of the regulated energy utility. Mr. Everts explained that he drafted LC0045 using the recommendations of the Governor's Task Force. Mr. Everts agreed the term "significant" was nonspecific. Chairman Olson suggested specificity could be provided under utility transactions. Mr. Everts explained LC0045 sets up the ability for the PSC to review actions taken by the public utility that may potentially impact the fiscal integrity of the utility and allow the PSC to have some control. In contrast, LC0042 (EXHIBIT 5) provides authority to approve the transfer, acquisition, or lease of a utility asset. Mr. Everts explained the difference, noting that LC0045 ensures the financial integrity of the utility is protected, and LC0042 has to do with the actual transfer of an asset.

Sen. Thomas inquired whether there was a time frame for action by the PSC, and Chairman Olson responded there was not. Sen. Thomas expressed concern about the lack of a specific time frame.

Sen. Stonington asked if the definition could be written so it defines "significant" as having a potential impact on the financial stability of a regulated energy utility and then describes the type of material affiliate transactions that would be reviewed and approved. Sen. Stonington suggested this would add definition to the terms. Mr. Everts agreed he could make that change.

Sen. Stonington moved that Mr. Everts clarify the definition of "material affiliate transaction" to reflect what significant means.

Rep. Gallik asked Rep. Stonington if she was suggesting the four items under Section 2, page 2, would be the only items the PSC could review and approve for transactions, or whether they were just the main items the PSC would consider. Rep. Gallik had concerns whether the list was all inclusive, and if not, whether language indicating the list was not all inclusive should be added for clarification. Sen. Stonington believed "including" had been interpreted to mean "not limited to" and would not exclude other options.

Rep. Gallik offered a friendly amendment to add "but not limited to" language.

Sen. Stonington's motion to clarify the definition of "material affiliate transaction" to reflect what significant means, with Rep. Gallik's amendment, carried unanimously.

Rep. Matthews requested a time limit be placed in the bill. Comm. Rowe suggested including language stating that where action is required, it must occur within 45 days or the matter must be set for hearing.

Sen. Thomas moved that the language suggested by Comm. Rowe be added, as well as rule-making language. The motion carried unanimously.

***(Tape 3; Side A)***

Sen. Johnson asked if the current law required all affiliate transactions be reviewed by the PSC before or after the transaction takes place. Comm. Rowe explained how in specific instances there is a requirement for PSC approval prior to the transaction, but more generally, PSC approval is not required. Sen. Johnson asked Comm. Rowe whether the PSC would be comfortable reviewing the transaction after the deal has already been made. Comm. Rowe replied the PSC supports LC0045. Mr. Everts clarified for Sen. Johnson that LC0045 provides that a regulated utility may not enter into a material affiliate transaction without the review and approval of the PSC. Comm. Rowe further explained that most of what occurs would fall outside the scope of materiality.

• **Public Comment**

Mr. Carl Schweitzer, representing the Sheet Metal and Air Conditioning Contractors, was disappointed LC0045 did not cover the issue of an affiliated activity being conducted by a regulated utility that is not reviewed to determine whether the activity is affecting the rates.



Sen. Johnson inquired whether Mr. Schweitzer addressed his particular point before the Governor's Task Force. Mr. Schweitzer replied that his concern could be addressed by ring-fencing legislation, although he did not specifically recall testifying to that specifically before the Governor's Task Force.

Rep. Gallik asked how Mr. Schweitzer would propose to amend the bill to address his concerns. Mr. Schweitzer could not offer a specific amendment but stated anything within the regulated energy utility should fall under the PSC's review. Mr. Schweitzer spoke about the installation of energy systems by regulated utilities, and how that service affects rates. Rep. Gallik agreed, and stated he would support LC0045 with the understanding that consideration should be given to Mr. Schweitzer's concerns.

Rep. Matthews stated MDU customers do have the option to pay a service charge, and MDU does sell and service appliances. Rep. Matthews urged caution about including too many specifics in the proposed legislation and losing ring-fencing all together.

Mr. Everts stated he would get the new language for the proposed legislation to the ETIC members as soon as possible.

Sen. Stonington's motion to adopt bill draft request LC0045 as amended carried unanimously with Rep. Fuchs and Sen. Ryan voting by proxy.

Sen. Thomas moved the revised LC0045 be adopted by the ETIC.

Mr. Everts submitted a revised version of LC0045 after the lunch break, and explained the changes to the ETIC (EXHIBIT 6).

Sen. Thomas's motion to adopt LC0045 as revised carried unanimously with Rep. Fuchs and Sen. Ryan voting by proxy.

- **Utility Transactions Draft Legislation**

Mr. Everts presented LC0042 and explained the legislation to the ETIC members. Mr. Everts directed the ETIC to public comments summarized in Exhibit 4.

Mr. Rick Hays, representing Qwest, directed the ETIC to Qwest's written comments contained in the packet entitled "Public Comment on ETIC Draft Legislation" (EXHIBIT 7).

Sen. Stonington moved the ETIC approve LC0042.

Sen. Stonington noted the reference to Section 1(3)(6) should be to Section 1(3)(b). Mr. Hays agreed. Sen. Stonington asked Mr. Hays to provide a history of the 10 percent versus 25 percent provided in Section 1(b)(i). Mr. Hays stated the 10 percent was used to cover the overwhelming majority of asset transfers that take place in the state. Sen. Stonington noted the difference would be between \$50 million and \$125 million.

Chairman Olson noted the third revision requires the placement of "operating or managing the" after the word "of" and wondered which "of" the revision referred to. Mr. Hays determined the language should be inserted after the first "of" and "a" should also be stricken.

Sen. Thomas asked Mr. Everts whether he thought the proposed edits were helpful to the proposed legislation. Mr. Everts explained some of the proposed revisions were cleanup language, but some were also policy related. Specifically, Mr. Everts identified revision No. 4 as a policy decision. Mr. Everts was uncertain about No. 5, and in addressing No. 6, Mr. Everts recalled "diminish" means to reduce and the term "limit" means to restrict. Mr. Everts was uncertain about No. 7, and stated the suggested revision contained in No. 8 was substantive and is a policy decision. Mr. Everts suggested the first revision was already covered. Mr. Everts thought revision No. 3 was clarification, but deferred to the PSC.

Sen. Stonington suggested the revision proposed in No. 3 was nonsensical. Comm. Rowe reviewed the proposed revisions and added his comments. Comm. Rowe thought No. 1 was already in Code, and stated he opposed No. 2. In addressing No. 3, Comm. Rowe agreed with the Sen. Stonington that the suggested revision did not flow grammatically. Comm. Rowe was uncertain about No. 4 and did not know what the implication would be. Comm. Rowe agreed with the revisions contained in Nos. 5 and 6. Comm. Rowe was uncertain about No. 7, and commented No. 8 would have to be done through a contested case process. In addressing No. 2, Comm. Rowe stated he takes the opposite view as Mr. Hays regarding the intent. Comm. Rowe recalled Mr. Hays stating the intent of the bill is to bring the great majority of transactions under the PSC's review. Comm. Rowe suggested the language would exclude the great majority of transactions from PSC review. Comm. Rowe noted even ten percent could potentially be a large part of a company. Comm. Rowe closed his comments by stating the PSC's focus is mainly on revision No. 2.

Sen. Thomas moved the ETIC adopt proposed amendments 5, 6, and 8.

Sen. Stonington asked for an interpretation of proposed amendment No. 5. Mr. Hays responded that Qwest was interested in the acquirer being financially and operationally able to utilize the acquisition. Mr. Hays stated if somebody can manage the assets and run them on a forward basis, it should go like any other transaction.

Sen. Stonington wanted to know who would decide whether a company was financially capable. Mr. Hays replied the PSC would approve the transaction if it found that the applicant for the acquisition is financially and operationally capable.

Sen. Johnson noted the word "the" would need to be placed in front of applicant.

Sen. Thomas's motion that the ETIC adopt proposed amendments 5, 6, and 8, including Sen. Johnson's suggestion, carried unanimously with Rep. Fuchs and Sen. Ryan voting by proxy.

**(Tape 3; Side B)**

Rep. Gallik asked what "just and reasonable rates" would mean. Comm. Rowe suggested the term "just and reasonable" is a term of art and stated there are treatises written interpreting the term. Comm. Rowe suggested the traditional way to define "just and reasonable" is cost-based rates and revenue requirement based on investment, minus depreciation, times a rate a return, plus expenses. Comm. Rowe stated other formulas are used as well.

Rep. Gallik asked if changing "just and reasonable" to "cost-based" would give better direction and would have the review be based on cost, plus a reasonable rate of return. Comm. Rowe respectfully stated he could not support that change and suggested those types of changes should occur in a different statute.

Rep. Gallik spoke about the reference to 180 days contained on page 3, subsection (4), and asked if 180 days is enough time. Comm. Rowe thought 180 days would be tight but reasonable. Conversely, Rep. Gallik wanted to know whether 180 days would be reasonable for anyone wanting to oppose the approval.

Mr. Bob Nelson, Montana Consumer Council, also thought the 180-day provision would be very tight and stated under most circumstances, and with the cooperation of the parties, 180 days would be reasonable. Mr. Nelson stated he would like to see procedural rules address issues such as an incomplete application, and stop the 180 days from running. Rep. Gallik noted that as written, subsection (4) says "The commission shall". Mr. Nelson suggested the PSC could write a rule defining what constitutes an application. Rep. Gallik noted that since subsection (4) allows the applicant to waive the requirement, it might be better to allow the PSC the same ability. Mr. Nelson replied he would be more comfortable with more flexibility. Mr. Nelson agreed that "just and reasonable" is a term of art.

Rep. Matthews moved the percentage in Section 1(b)(i) be set at 25 percent.

Rep. Gallik suggested setting the limit at 25 percent would cause the opposite effect of what the bill was intended to do. Rep. Gallik stated he would oppose Rep. Matthews' motion.

Sen. Stonington asked Comm. Rowe for a background in setting the \$200,000 threshold. Comm. Rowe responded the reason for including both the percentage and the fixed dollar amount was because \$200,000 is consistent with basic investment in telecom switching basic equipment. Comm. Rowe suggested the \$200,000 figure could be raised significantly. Comm. Rowe supported including both a percentage and a dollar value, i.e. \$200,000 or ten percent, and that would be in addition to the possibility for an exemption provided under Section 1(c).

Sen. Thomas asked for examples of transactions that the legislation would have applied to. Comm. Rowe replied the largest transactions have involved the complete transfer of operation

of The Montana Power Company (MPC) to NWE and the sale of telecommunication exchanges.

Sen. Johnson referred the ETIC to the PSC's proposed amendments contained in its memorandum dated September 1, 2004, and incorporated in Exhibit 7. Sen. Johnson thought the PSC's suggestion of adding \$200,000 or 10 percent, whichever is less, was a good suggestion. Sen. Johnson made a substitute motion to accept the recommendation of the PSC in relation to Section 1(b)(i).

Sen. Thomas suggested that Sen. Johnson's concerns would be addressed if the language stated "whichever is greater." Comm. Rowe cautioned the ETIC to not lose sight of Section 1(b)(ii) which provides an exemption for any transaction in the ordinary course of business. In addition, Comm. Rowe noted subsection (c) provides for an exemption on good cause. As to the dollar amount, Comm. Rowe did not feel any attachment to the \$200,000 figure.

Sen. Stonington recalled the historical value of the issue, and summarized her understanding as being regardless of the percentage, this type of review would only occur if the transaction results in a change of ownership of the whole business. Comm. Rowe clarified that if the ownership or control of a utility service of a customer in Hamilton could change and it may not necessarily be a sale of the whole business, but would be a transfer in the ownership or control of utility service to a customer in Montana.

Sen. Stonington expressed concerns about encumbering the utility with minor decisions that they should be able to make in their normal course of business and what point that begins to affect the public interest. Sen. Stonington did not have a clear indication of what that threshold would be.

Chairman Olson asked Mr. Doug Hardy, representing the Montana Electric Cooperatives Association, how much distribution line could be put up for \$200,000. Mr. Hardy responded it would cost approximately \$10,000 per mile for single-phase distribution. Mr. Hardy explained a transformer could cost approximately \$400,000. Mr. Hardy explained how power lines are very capital expensive and that not much could be done for \$200,000.

Rep. Gallik asked if putting up power lines would fall within the ordinary course of business, and Mr. Hardy agreed it would, but could not say whether selling power lines would fall within the realm of normal course of business.

Sen. Stonington suggested \$200,000 is too low, and 25 percent is probably too high. Sen. Stonington thought the threshold should be lower, and there should also be a percentage that acts as a trigger. Sen. Thomas suggested it would be better to use a percentage since it would follow the size of the company. Sen. Thomas thought if a dollar amount was used in conjunction with a percentage, the language should state "whichever is greater." Rep. Gallik stated he would support setting the dollar amount at \$500,000. Sen. Stonington suggested using \$500,000 or 15 percent, whichever is greater. Sen. Johnson agreed and amended his motion so Section 1(b)(i) would reflect \$500,000 or 15 percent, whichever is greater. Sen. Johnson's motion carried with Sen. Gallik voting no, and Rep. Fuchs and Sen. Ryan voting by proxy.

Rep. Gallik moved to amend LC0042 on page 3, subsection (4), by amending the last sentence

to read, "The applicant or the commission may waive this requirement for good cause shown." Rep. Gallik believed the commission should be able to have more time if it could show good cause and, if the applicant could waive the requirement, the commission should be able to have the same ability.

Rep. Gallik's motion failed by a 4-4 vote with Rep. Fuchs and Sen. Ryan voting by proxy.

Rep. Gallik moved subsection (3)(b) on page 2 be amended by changing "just and reasonable" to "cost-based". Rep. Gallik believed too many arguments could be made about what is "just and reasonable." Rep. Gallik suggested "cost-based" is more narrowly focused to ensure the public interest is being served by providing not only the ability to recover costs, but also having a reasonable rate of return.

Sen. Stonington pointed out "cost-based" may exclude the utility from being able to make any money on the transaction. Rep. Gallik stated his intent is to include what it costs for the acquisition plus a reasonable rate of return.

At the request of Rep. Matthews, Comm. Rowe commented that he would strongly oppose Rep. Gallik's amendment because there are a number of different rate-making approaches that the courts have found to be just and reasonable. In addition, Comm. Rowe stated the bill would apply not only to power supply transactions, but to all aspects of energy regulation. Comm. Rowe stated he would prefer to see the Legislature make these types of policy decisions in the particular applicable statute.

Rep. Gallik's motion to amend subsection (3)(b) on page 2 by changing "just and reasonable" to "cost-based" failed, with Rep. Fuchs and Sen. Ryan voting by proxy.

Sen. Johnson moved that Qwest's proposed amendment Nos. 5 and 7 on Exhibit 7 be adopted.

***(Tape 4; Side A)***

Comm. Rowe thought the language was useful, but referred the issue to Mr. Nelson. Mr. Nelson clarified the importance of the concept contained in subsection (3)(c) and commented it is one the PSC traditionally considers when an application for a transfer is reviewed.

Sen. Thomas asked if there was a need for an additional rate-setting authority in the law. Mr. Nelson stated there are situations where technically the PSC may have the authority to set different rates, but cannot because there is not the financial viability or background for the PSC to engage in any major disallowance. Mr. Nelson thought the objective in a pre-transaction review is to look ahead and see what circumstances might arise and whether a new acquiring entity is going to be put in a position where the PSC cannot engage in some kind of corrective action. Mr. Nelson stated it is important for the PSC to have the ability to look at that in advance. Mr. Nelson noted the exception clause comes first, and the standard is that the PSC has to approve the transfer if it finds rates will not increase.

Sen. Johnson asked whether the PSC considers these factors whenever it is considering approving anything that will have an affect on the consumers in Montana, such as the sale of MPC. Mr. Nelson agreed the PSC did consider those factors in that instance, and that the purpose of the legislation is to resolve a dispute as to whether the PSC has that fundamental authority. Comm. Rowe added that the purpose of subsection (3) is to specify findings the PSC should make in reviewing a transaction. Sen. Johnson asked if he was to assume these considerations were not contemplated by the PSC in the instance of the MPC sale because the considerations were not set out. Comm. Rowe replied the PSC did look at the items, and the legislation is an attempt to set forth in statute what items the PSC should consider. Sen. Johnson asked if the list was complete, and Comm. Rowe replied he thought the list was adequate. Mr. Nelson added the items were discussed by the Governor's Task Force, and the list is compiled of factors they thought were critical.

Rep. Gallik strongly suggested the language should stay in the bill because of the way the legislation reads "the commission shall approve" and then sets forth the criteria that needs to be met for approval.

Rep. Matthews inquired about wireless services in Eastern Montana and how that would be affected by the legislation. Comm. Rowe pointed out wireless service is not regulated by the PSC. In addition, there is no prohibition on a new company coming in to provide telecommunication service. Comm. Rowe noted it could apply to the review of a sale of a telecommunications exchange.

Sen. Thomas summarized subsection (3), including (a), (b), and (c), and Mr. Nelson agreed with Sen. Thomas's summary. Sen. Thomas agreed the subsection should remain in the legislation.

Sen. Johnson's motion that Qwest's proposed amendment Nos. 5 and 7 on Exhibit 7 be adopted failed with Rep. Fuchs and Sen. Ryan voting by proxy.

Mr. Everts summarized that the ETIC had adopted amendment Nos. 5, 6, and 8,

The ETIC approved LC0042, as amended, with Rep. Gallik voting no, and Rep. Fuchs and Sen. Ryan voting by proxy.

- **Property Tax Exemption Extension Draft Legislation**

Mr. Everts explained that LC 6543 will extend the eligibility date to January 1, 2012, for the property tax exemption granted to electrical generation and transmission facility properties under certain conditions (EXHIBIT 8). Mr. Everts directed the ETIC to his summary of public comments contained in Exhibit 4.

Sen. Thomas moved the ETIC adopt bill draft request LC6543.

Mr. Everts explained to Sen. Thomas that the proposed legislation does not include wind generation, but that there are other property tax incentives on the books for wind generation. Mr. Everts explained that there is a five-year property tax exemption for new generating facilities built in Montana with a nameplate capacity of less than one megawatt and using alternative renewable energy resources. In addition, there is a property tax reduction for



generating plants using alternative fuels greater than one megawatt. Mr. Everts noted the provision for property tax reduction contains some qualifiers. Mr. Everts explained LC6543 provides for a property tax exemption for a ten-year period and also contains a few qualifiers, including a requirement that the owner "shall offer" contracts to sell fifty percent of the facility's net generating output at a cost-based rate. In addition, the property tax exemption is limited to a five-year period for generation facilities powered by oil or gas turbines.

Sen. Thomas suggested the language "shall offer" should be tighter and require selling the power inside Montana, as opposed to just offering the power. Rep. Matthews recalled the intention of the legislation was to get more generation in Montana and to obtain lower rates.

Chairman Olson asked if the legislation would set up an unfair market since none of the existing Colstrip generation facilities would be eligible for the tax break. Chairman Olson also expressed concerns about the legislation costing local governments money. Chairman Olson suggested using the new business tax credit, which is optional at the county level.

Rep. Gallik thought the legislation would be setting up an unfair advantage with regard to those who would want to provide generating facilities by coal-fired, oil or gas, or falling water and eliminates wind. Rep. Gallik stated wind could be the future energy of Montana. Rep. Olson reminded Rep. Gallik that wind has received numerous tax incentives over the years. Rep. Gallik suggested incentives should be given to all types of generation. Sen. Thomas agreed that wind generation should be included in any tax incentives. Sen. Thomas suggested amending the legislation to include wind, proposing the extension, and sending it to the legislature for its consideration.

Sen. Stonington did not like the proposed legislation and stated she did not want to see the legislation move forward as a committee bill.

Chairman Olson moved to amend Section 1, to strike "shall offer contracts to sell 50%" and inserting "shall contract to sell 50%." Chairman Olson explained that this would ensure that if the contract falls through, no tax incentive would be realized.

Chairman Olson's motion carried unanimously, with Rep. Matthew voting in opposition.

Sen. Thomas moved to include wind generation in the legislation.

Rep. Gallik offered a substitute amendment to remove the last sentence of subsection (4)(a)(i), so the legislation would apply to any type of generation that produces 20 average megawatts or more. Rep. Gallik's motion carried unanimously, with Rep. Fuchs and Sen. Ryan voting by proxy.

#### • **Public Comment**

No public comment was offered on LC 6543.

Sen. Thomas's motion that the ETIC adopt bill draft request LC6543 failed with Rep. Gallik, Sen. Johnson, and Sen. Stonington voting no, and Sen. Ryan voting no by proxy.

**(Tape 4; Side B)**

- **Interim Committee Laws Revisions Draft Legislation**

Mr. Everts only received one public comment on LC0041 (EXHIBIT 9) and directed the ETIC members to the comment contained on Exhibit 4 received from Montana Independent Telecommunications Systems (MITS). Mr. Everts explained the intent of LC0041 was to cleanup loose ends in terms of policy making with respect to the ETIC and its oversight of the PSC. The proposed legislation also attempted to eliminate the Environmental Quality Council's (EQC) statutory oversight over the energy development process and grants that authority to the ETIC. Mr. Everts explained the EQC believes the bill should go through the legislative process. Mr. Everts added the proposed legislation clarifies that the ETIC has oversight over the Department of Public Service Regulation and the PSC.

Rep. Gallik was curious why § 90-4-101 was being removed from Section 2(b). Mr. Everts explained there is an energy policy in statute that was developed by EQC and adopted by the Legislature. The section contains a process in which the EQC, working with the DEQ and PSC, will maintain a continual process for energy policy development. Mr. Everts explained LC0041 will eliminate that and maintain the policy on the books. Mr. Everts noted there is fairly broad language under the interim committee statutory authority to develop energy policy. Mr. Everts identified a duplication of effort and suggested there need only be one committee developing energy policy.

- **Public Comment**

There was no public comment offered on LC0041.

LC0041 was approved unanimously with Rep. Fuchs and Sen. Ryan voting by proxy.

### **PROPOSED CONCEPTUAL LEGISLATION REGARDING PROPERTY TAX REDUCTION FOR RENEWABLE RESOURCE GENERATING FACILITIES**

Chairman Olson moved a conceptual bill draft stating:

Currently, we have a property tax reduction for renewable resource generating facilities of one megawatt or greater, and it amounts to generating plants producing one megawatt or more by means of an alternative, renewable energy source are eligible for the new or expanded industry property tax reduction on the local mill levy during the first nine years of operation, subject to the approval by the local government. If so approved, the facility is taxed at 50 percent of its taxable value in the first five years after the construction permit is issued. Each year thereafter, the percentage is increased by equal percentages until the full taxable value is attained in the tenth year. If owned by a utility, an exempt wholesale generator, or certain other electrical energy producer, this property would be taxed on six percent of assessed value. If owned by an electric cooperative, this property would otherwise be taxed at three percent of assessed value. If owned by any other business, the real property would be taxed at 3.46 percent, and the personal property would be taxed at a rate of three percent of assessed value. The assessed value of real property is adjusted every five years to reflect market trends . . . The tax reduction applies only to taxes levied for the local high schools and elementary schools and for the local government

offering the reduction. It is something that is approved by the local government.

Sen. Stonington wondered at what point the local public would vote on the property tax reduction. Chairman Olson stated at the present time, the reduction is not voted on by the public and is a decision made by the County Commissioners in consultation with the school district and the city council.

Rep. Gallik commented that he believed it was too late to be drafting legislation to be reviewed and endorsed by the ETIC and presented during the 2005 Legislative Session. Rep. Gallik suggested Chairman Olson introduce the bill independent of the ETIC.

Chairman Olson's motion to approve a conceptual bill for consideration by the ETIC carried with Rep. Gallik and Sen. Ryan voting no.

Chairman Olson requested Mr. Everts to e-mail a draft of the proposed legislation to the ETIC members. Rep. Gallik expressed concerns over the ETIC's ability to approve legislation without meeting and providing an opportunity for public comment. Mr. Everts suggested that after the draft legislation is received and reviewed by the ETIC members, a conference call could be arranged and noticed to provide opportunity for public comment.

Rep. Gallik moved that procedural due process be followed and that notice be given, a meeting be held and funded, and that ample opportunity be given for public comment.

Sen. Thomas understood Rep. Gallik's concerns, but reminded the ETIC that the legislation would still have to go through the whole legislative process. Rep. Gallik responded that he did not feel the legislation should have the ETIC's endorsement going into the Legislature unless it has had the full scrutiny of the ETIC and the public.

Rep. Gallik's motion that procedural due process be followed and that notice be given, a meeting be held and funded, and that ample opportunity be given for public comment failed with Sen. Thomas, Rep. Matthews, Rep. Fuchs, Sen. Johnson and Rep. Olson voting no.

Chairman Olson explained his proposal to allow new generation to take advantage of the new and expanding business tax credit, which is a 50 percent tax reduction for five years and ratcheted up to 100 percent by the tenth year. The entity proposing the project will go before the appropriate county commissioners for approval. Chairman Olson pointed out that the reduction currently exists for new wind generation greater than one megawatt.

Rep. Gallik again voiced his objection to the proposed process of adopting Chairman Olson's conceptual legislation. Chairman Olson disagreed and stated procedural due process would be attained through a properly noticed conference call.

Sen. Stonington suggested Mr. Everts be given an opportunity to review the legislative notice requirements and that everyone be given an opportunity to review the proposed legislation. Sen. Stonington suggested if proper procedure could be followed, the ETIC should proceed, and if proper procedures could not be followed, that Rep. Olson independently bring the bill before the Legislature. Chairman Olson agreed.

Sen. Thomas moved the ETIC reconsider its action in approving Chairman Olson's conceptual

legislation regarding a property tax reduction for renewable resource generating facilities of one megawatt or greater. The motion carried unanimously.

#### **DISCUSSION AND PUBLIC COMMENT ON POTENTIAL UNIVERSAL SYSTEM BENEFITS LEGISLATION**

- **Representative Olson's "Cost Effective" Definition Proposal**

Mr. Everts directed the ETIC members to his memorandum outlining potential Universal System Benefits (USB) proposals (EXHIBIT 10).

Chairman Olson recapped the ETIC's actions regarding USB at its meeting in Colstrip and reminded the ETIC that it had adopted Chairman Olson's proposed amendment, but then failed to pass the proposed legislation in its entirety. Chairman Olson proposed that each of the provisions of the USB legislation, as outlined in items 1-9 of Exhibit 10, should be discussed and voted on separately.

Chairman Olson moved his proposed definition of "Cost Effective Renewable Resource Project" be adopted into § 69-8-103 and the changes proposed in 69-8-402.

Sen. Stonington noted that several of the items enumerated 1-9 in Exhibit 10 were noncontroversial, and suggested the ETIC members may want to pass those noncontroversial items first.

Sen. Johnson believed the items should be voted on separately since one controversial issue could defeat the legislation entirely.

Chairman Olson stated renewable resource projects are being funded by a tax placed on ratepayers' utility bills, and that sometimes these renewable resource projects are not cost effective.

#### ***(Tape 5; Side A)***

Chairman Olson did not believe this was a wise use of money if the project will not become cost effective for many years. Chairman Olson suggested the money could be better used for weatherization, low-income, and conservation.

- **Public Comment**

Mr. Dave Ryan, representing the National Center for Appropriate Technology, submitted written testimony regarding renewable energy resources (EXHIBIT 11).

Mr. Chuck McGraw, representing Renewable Northwest Project and Natural Resources Defense Council, testified the reason renewable resource projects are funded out of the program is because of market barriers to entry for these projects. Mr. McGraw stated the playing field is not level. Mr. McGraw suggested a cost-effective definition, by its terms, would be inconsistent with the very reason the program is funding the projects. In addition, Mr. McGraw stated he does not understand why the ETIC would limit the application to off-grid projects. Mr. McGraw stated he is troubled by the selective application and suggested there are other elements of the program that are not having a the rigorous definition of "cost-effective" being applied.

Mr. Patrick Judge, Montana Environmental Information Center, believes the renewable energy portion of the USB program has substantial benefits, both environmental and economic. Mr. Judge agreed with Mr. McGraw's concerns about limiting the application to off-grid projects. Mr. Judge suggested that they have shown flexibility and have been sensitive to the concerns of lawmakers about targeting the projects to more public settings to get overlap benefits. Mr. Judge hoped the existing commitment to renewable energy would be honored. Mr. Judge pointed out that the reason funding is needed is because the projects are not cost-effective and if they were, the projects could stand on their own. Mr. Judge pointed out that many of the considerations contained in the definition section of § 69-8-103 would be eliminated by narrowing the definition of "cost-effective."

Mr. Matt Leo, representing the Montana Public Interest Research Group (MontPIRG), expressed serious concerns with the proposal to include the cost-effective requirement and definition. Mr. Leo believed the requirement would ignore all other benefits derived from renewable energy. Mr. Leo did not think the off-grid requirement made sense.

Sen. Johnson noted the individuals were in favor of the concept of the USB program and wondered if they would be in favor of increasing the proceeds to the USB program. Mr. Judge responded they would favor an increase. Sen. Johnson noted all the individuals who testified objected to "off-grid." Chairman Olson explained that in the rural areas, he could show cost-effective solar projects. However, he noted the solar panels on the Roundup High School cost approximately \$18,000, but only save approximately \$250 annually in electricity costs. Chairman Olson suggested many low-income homes in the Roundup area could have been weatherized and would have saved substantially more than \$250 annually. Chairman Olson recalled another wind generation project in Roundup that cost \$38,000, and that the owner was even able to sell power back to the power company. Again, Chairman Olson noted the low-income households that could have been weatherized. Chairman Olson admitted resources were limited, but felt strongly that those resources should be channeled where they were needed the most.

Sen. Thomas asked if there was a comprehensive report depicting where money has been invested in conservation and renewables. Mr. Everts explained the utilities are required to report to the Montana Department of Revenue (DOR) on where the USB credits are going.

Mr. Pat Corcoran, NorthWestern Energy, agreed the information could be obtained from NWE's annual report filed with the DOR. Mr. Corcoran hesitantly agreed a more comprehensive report could be provided.

Sen. Thomas suggested more information was needed on the various projects, and that more

emphasis should be placed on low-income assistance in the form of insulation first and bill assistance second. Sen. Thomas stated 150 megawatts of gross wind generation could be built into the default supply today, but there was not adequate support. Sen. Thomas stated he would support the proposal.

Sen. Stonington summarized the issue as how to treat the various aspects of the program that was set up to improve the energy situation for the whole society and identifying the role of renewables. Sen. Stonington thought limiting the definition would not improve the future of renewables in Montana. Sen. Stonington stated she would support increasing the amount for low-income energy assistance, but did not want require renewable resources to be cost-effective. Sen. Stonington though narrowing the definition to reduce renewable resources is the wrong way to approach the issue.

Sen. Thomas stated he would like to see accountability for renewable resource projects and does not want to see the state investing in projects that will not gain benefit for eighty years. Sen. Thomas would like to see a more common sense approach for renewable resource projects. Sen. Stonington agreed and suggested not defining renewable resource projects out of existence, but rather defining them into the realm of accountability.

Chairman Olson's motion that his proposed definition of "Cost-Effective Renewable Resource Project" be adopted carried with Sen. Stonington, Sen. Ryan, and Rep. Gallik voting no.

Sen. Thomas inquired whether the ETIC would be interested in working on language that would define in accountability. Chairman Olson stated he would discuss proposed language with Sen. Stonington.

- **Montana Electric Cooperatives' USBP Funding Proposal**

Doug Hardy, representing Montana Electric Cooperatives Association, testified that things have happened that make differences among Co-ops and between Co-ops and the investor-owned utilities. Mr. Hardy explained the Co-ops do not serve the natural gas side. Mr. Hardy explained how the Co-ops ended up ramping up their obligation to USB far more than was intended. Mr. Hardy would like to see separate USB provisions for the two different types of utilities. Mr. Hardy explained it is 100 percent the Co-ops' intention to meet the obligations they accepted in 1997. Mr. Hardy explained the Co-ops do not want to be part of a solution for a problem they are not a part of. Mr. Hardy directed the ETIC to Attachment 1 of Exhibit 10. Mr. Hardy referred to the proposed legislation and noted the correct percentage should be 2.4 percent and not 2 percent as referenced in the bill.

Rep. Gallik clarified the correct percentage should be 2.4 percent. Rep. Gallik suggested looking at Sen. Johnson's funding proposal since it was uniform across the board. Rep. Gallik stated he was uncomfortable having two separate sets of rules.

Sen. Stonington asked whether the proposals should be considered in tandem or whether they should be considered separately. Rep. Gallik responded that Sen. Johnson's proposal was discussed in Colstrip, and Rep. Olson's definition for "cost-effective" renewable resources was discussed, but the Co-ops' proposal was not raised. Sen. Stonington asked whether Mr. Hardy was suggesting the Co-ops' proposal should take the place of Sen. Johnson's proposal. Mr. Hardy stated that was not their intention, but rather that the Co-ops would do something similar.



Sen. Thomas recalled Mr. Hardy expressing a concern in Colstrip, and that this legislation was drafted to address that concern. Sen. Thomas summarized that if the ETIC makes changes to the current USB program, it would cause concern with the Montana Electric Co-operative Association. If the ETIC does not make any changes in percentiles, then the Montana Electric Co-op Association would not be concerned. Mr. Hardy agreed and stated the legislation is a result of all the different potentials that were discussed in an attempt to solve problems in the electric utility industry. Rep. Gallik clarified that there was no substantive discussion about the Co-ops at the meeting in Colstrip.

Sen. Johnson stated he did not want to have his proposal joined with the proposed legislation by the Co-ops.

Rep. Matthews did not feel it was unreasonable to recognize that the Co-ops are different and treat them differently.

Sen. Thomas stated the ETIC did not need to act on the Electric Co-ops Association's request unless they adopt Sen. Johnson's proposal and suggested the ETIC discuss Sen. Johnson's proposal.

*(Tape 5; Side B)*

- **Senator Johnson's USBP Funding Proposal**

Sen. Johnson suggested his proposal could offer some solution to the problems of USB. Sen. Johnson stated the Co-ops do not believe the USB program is efficient and do not like the USB program. Sen. Johnson believed there are far more people in the state who view the program as successful. Sen. Johnson explained his proposal would use 2003 numbers instead of 1995. The percentage numbers would be reduced by the amount from where they were before, 2.4 percent. Sen. Johnson explained the number is not being raised, but as revenue goes up, 2.9 percent would be added based on the amount of revenue. If revenue goes down, the process would still work in reverse. Sen. Johnson explained that from 1995 until 2003, the Co-ops' revenue has increased from \$158 million to \$197 million. Sen. Johnson explained his formula will not place a major drag on any corporation. Sen. Johnson admitted he was not certain the 2.19 percent figure is exactly correct. Sen. Johnson explained that his formula will ensure the program will improve on a yearly basis if revenues rise. Sen. Johnson spoke about incidences of the Co-ops' service areas becoming adjacent to cities and questions arising as to which utility would service these areas. Sen. Johnson stated if the Co-ops are going to serve these areas, they should be willing to pay the same amount to take care of the people that are going to live there. Sen. Johnson stated his formula will not penalize anyone and, if revenues stay the same or decline, the company will not have an increase.

Sen. Thomas summarized Sen. Johnson's proposal and stated beginning January 1, 2006, the mechanism will be updated to a current date and a number that generates the same funding as in 1995. The program will move forward with a set percentile. The USB program will be 2.19 percent of rates going forward. Sen. Thomas suggested the Co-ops could make a very reasonable and rationale argument that they do not need additional monies that the percentile would raise, because more of their expenses are incurred in poles and wires used to deliver electricity versus the supply side. Sen. Thomas stated the poles and wires are not what is causing the problem, but rather supply costs are causing the problems. Sen. Thomas thought

the Co-ops should be treated separately.

Sen. Johnson stated the money could be used for paying debt or expanding a system. Sen. Johnson thought his formula would help those who are losing customers since their revenue would be going down. Sen. Johnson spoke about Yellowstone Valley Electric and their outstanding rise in revenues. Sen. Johnson pointed out Yellowstone Valley Electric would be taking in the suburban areas around Billings and their revenues would continue to rise. In contrast, the Co-op at Circle is not doing as well, so their participation would be lower.

Rep. Matthews reminded Sen. Johnson that he supported Sen. Johnson's amendment in Colstrip, and asked if when the Co-ops bring forward their proposal whether Sen. Johnson would support it. Sen. Johnson replied he could not, and that no one should be treated differently. Rep. Matthews asked if the Co-ops, before SB 390 in 1997, paid a USB charge. Sen. Johnson replied no one did. Rep. Matthews stated the only increase any new customers have had in electricity has been the USB charge. Sen. Johnson commented that while the USB charge was on and Co-ops were not paying, the USB got spread into a lot of areas that were not paying in. Sen. Johnson narrowed the question down to social attitude and whether you want to help people. Rep. Matthews recalled that MDU paid into different programs for low-income assistance. Rep. Matthews' concerns centered around the small Co-ops who do not even use natural gas.

Sen. Stonington asked Mr. Hardy why he feels it would be fair for the Co-ops to use a different formula for calculating USB. Mr. Hardy explained the Co-ops would accept Sen. Johnson's proposal, but did not think the proposal was fair since it is not revenue neutral. Mr. Hardy objected to the Co-ops being bumped up to the same starting point as the public utilities. Sen. Stonington asked if the Co-ops' starting point was at a revenue neutral position, whether they would have a problem with having an increasing dollar amount over time as the percentage stays the same, but becomes an increasing dollar amount as revenues grow. Mr. Hardy agreed. Sen. Stonington thought both parties were suggesting setting a percentage that does not increase initial expenditures, but grows over time, and works the same for the public utilities and the Co-ops. Therefore, expenditures would grow as revenues grow.

Upon question from Sen. Johnson, Mr. Everts explained the percentage was based on figures from NWE, and the 2.19 percent was the amount of actual USB funding currently in place.

Sen. Thomas asked Mr. Hardy if he was okay with 1.91 percent for the Co-ops going forward. Mr. Hardy stated that was correct. Sen. Thomas noted the minimum is now set at 25 percent and asked for the Co-ops' reaction. Mr. Hardy replied the preference would be to stay with the 17 percent commitment that they have been funding low-income with. Mr. Hardy explained the Co-ops would like to use the local control to determine what the need is in a given area. Mr. Hardy would prefer to see the rate for the Co-ops be tied to their rates and not be based on what somebody's else's rates have done. Sen. Johnson stated he was more concerned with the percentage increase for the Co-ops, and that the percentage increase should be the same for public utilities and Co-ops.

Sen. Thomas moved to amend Sen. Johnson's proposal by adding language to separate the Co-ops into a separate percentile, as proposed by the Co-ops, along the same line as Sen. Johnson's proposal, but starting now and going forward at 1.91 percent. The public utilities would be at 2.19 percent going forward. Sen. Thomas moved to include the language

requested by the Co-ops that leaves their local control in tact and incorporate the language proposed by the Co-ops in 69-8-402(5)(b), which leaves the minimum at 17 percent.

Rep. Gallik stated he would support the motion since it takes into consideration Sen. Johnson's concerns of fairness and equity. Rep. Gallik stated he does not like to see the differentiation on the low-income side, but understands the reason for the differentiation.

- **Public Comment**

Mr. Pat Corcoran, representing NorthWestern Energy, stated NWE continues to support the need for the USB program. Mr. Corcoran spoke about the importance of obtaining a balance. Mr. Corcoran expressed concerns about the requirement to revert uncommitted USB funds to the state since they will not know what the annual funding requirement is that they will need to spend in that year until the year is completed. Mr. Corcoran explained that USB dollars are still coming in the door on December 31. Mr. Corcoran explained how NWE may commit funds in the year they were received, even though the money may actually be expended in the next year. In addition, Mr. Corcoran stated NWE's rates were set on a usage basis, so NWE already had an automatic mechanism built into the rates. Mr. Corcoran expressed concerns about focusing on the electric side of the utility, and Mr. Corcoran thought low-income customers are more concerned with natural gas. Mr. Corcoran suggested, at a minimum, maintaining the existing levels of funding. Mr. Corcoran identified the main problem as there not being enough money to go around and the need to strike a balance. Mr. Corcoran warned against raising NWE's customer rates. Mr. Corcoran believed more work needed to be done on USB.

Rep. Gallik asked Mr. Corcoran if he would like to see whatever is done on the electricity side be mirrored on the gas side. Mr. Corcoran stated he was not making that suggestion and did not have the answer.

**(Tape 6; Side A)**

Mr. Corcoran stated it was not an electric question or a gas question, but rather what is the right level of funding for low-income consumers, how do you fund it, who should be participating, and at what levels.

Mr. Greg Groepper, representing Energy Share of Montana, commended the ETIC for its work. Mr. Groepper believed that electricity, based on prior years' revenue, should be part of the USB. Mr. Groepper also believed it would be fair to have the Co-ops' starting point at a different number. Mr. Groepper stated there are 9,000 more individuals living at the poverty level in Montana than there were in 2001-02. Mr. Groepper calculated that \$1 in USB will currently only purchase approximately two-thirds of what it would have in 1997. Mr. Groepper was hopeful the proposed legislation would keep the low-income program from sliding backwards.

Ms. Pat Callbeck Harper, representing AARP Montana, submitted written comments to the ETIC (EXHIBIT 12). Ms. Harper would like to see fair and comparable access to energy assistance throughout the state. Ms. Harper believed there are a variety of special arrangements already embedded in the USB program that need to be considered. Ms. Harper suggested 25 percent for low income across the board would be appropriate.

Mr. Jim Nolan, Montana Department of Public Health and Human Services, testified the energy needs for low-income is incredible. Mr. Nolan stated there is a backlog of people who need their homes weatherized. Mr. Nolan believed that 25 percent for low-income assistance is the status quo. Mr. Nolan suggested Sen. Johnson's legislation should also incorporate some sort of fail safe mechanism in the instance revenues from the utilities go down.

Sen. Johnson commented that allowing the percentage to track with revenue, up or down, was the most fair way to go.

Mr. Corcoran added that unless the numbers are studied, it is impossible to say what the low-income adjustment should be. Mr. Corcoran pointed out approximately one-half to two-thirds of NWE's customers are combined gas and electric customers. Mr. Corcoran emphasized that they should take a harder look at the gas side of the equation.

Sen. Thomas wanted to know what the percentage was on the natural gas side and whether it was fixed. Mr. Corcoran explained the original legislation provided for a USB charge to be determined by the PSC and was to maintain existing levels of funding. Mr. Corcoran explained that in the past the rate under recovered the cost expended for natural gas conservation and low-income energy assistance in the approximate amount of \$200,000 to \$300,000 a year. However, as a result of the PSC's order to segregate out into the USB programs for NWE, the rates match the level of expense incurred for energy conservation and low-income assistance.

Sen. Thomas's motion to amend Sen. Johnson's proposal to have a separate percentile for the Co-ops at 1.91 percent and to leave the local flexibility in at the 17 percent carried with Sen. Johnson and Sen. Ryan voting no.

Mr. Everts clarified the ETIC adopted LC8686 with a separate section and different percentile that is revenue neutral specific to cooperatives. The amendment also includes a separate section for cooperatives on a minimum low-income funding level of 17 percent. Mr. Everts clarified LC8686 contains the USB extension to 2007.

Mr. Corcoran clarified that the term "uncredited" should be read "non-committed."

Sen. Stonington moved to amend the language to prohibit carry forward of "non-committed" USB funds. The motion carried unanimously.

Sen. Thomas moved to adopt the proposed language contained in items 7, 8, and 9 on Exhibit 10. The motion carried with Sen. Johnson voting no and Sen. Ryan voting no by proxy.

Sen. Thomas moved to extend the USB program to 2009. The motion carried with Sen. Johnson voting no and Sen. Ryan voting no by proxy.

Chairman Olson clarified with Sen. Thomas that his motion on USB included 25 percent for public utilities and 17 percent for the Co-ops. Sen. Thomas agreed that was correct.

- **Public Comment**

There was no further public comment offered on LC8686 as amended by the ETIC.

Sen. Thomas moved that one-half of the increase in the USB program go into other low-income programs.

Rep. Gallik was concerned with raising the amount to low income and then lowering that amount by moving half of the money. Sen. Thomas responded that he is proposing that low-income assistance grow a little bit more. Sen. Stonington stated she was resistant to the motion since more flexibility is needed and not more requirements.

Sen. Thomas's motion failed with Sen. Stonington, Sen. Johnson, Sen. Ryan, and Rep. Gallik voting no.

The motion to approve bill draft request LC8686, as amended, carried with Sen. Johnson voting no.

There being no further business to come before the ETIC, the meeting recessed at 6:08 p.m.